

Remarks

The Examiner rejected the original method claims under 35 U.S.C. 101 because the claims did not positively recite steps performed by the recited computer. Claim 1 now positively recites that both the storing and displaying steps are controlled by the computer.

The original claims were also rejected for not completely spelling out the acronyms when they first occur. This error has now been corrected in both independent claims.

The Examiner's "Note on Nonfunctional Descriptive Material" has been studied. Using the same logic, which requires one to ignore what the data actually represents, no method using a computer could ever be patented since the steps (instructions) practiced by the computer are all old. This cannot be.

The Examiner has misapplied Ex Parte Herman Mathias, Appeal No. 2005-1851. The Board gave an example of what it was ruling -- if the prior art suggested storing a song on a disk, then merely choosing a particular song to store would be within the level of ordinary skill in the art and would not be patentable. The Mathias invention differed from the prior art only in the image that was being broadcast and displayed; other images had long been broadcast and displayed.

If the subject claims defined just storing BMI data and displaying it, then the Mathias logic would apply. But the claims define more. Taking claim 1 as an example, two kinds of data are stored -- BMI and one or more of several kinds of data that the invention relates to BMI data. And instead of just displaying raw data, claim 1 requires displaying the BMI data in graphical form together with one or more of the other data in a way (and on a single screen) that facilitates comparative monitoring of the patient. This is a far cry from just storing some arbitrary data and displaying it.

The Examiner also cited Ex Parte James Prescott Curry, Appeal No. 2005-0509. This case held the same thing as in Mathias, and even used the same examples. The Board hardly intended to rule all computer-controlled methods as being "obvious" by virtue of ignoring what the data being operated upon actually represented and what was done with it.

Turning now to the rejection on prior art, the main reference is Yurko Publication No. 2003/0208465. It is true that Yurko provides for the entry or calculation of BMI. But once the information is entered, it is simply stored and displayed. Yurko's storage and display of BMI data would be an example of what the Board meant in its Mathias and Curry examples. But applicants are not simply storing and displaying BMI values. For a single patient, they are relating BMI and other data to each other in graphical form in a way that facilitates comparative monitoring of the BMI and sleep disordered breathing management of the patient. Even the display of all the data on one screen as claimed is important because this enables clinicians to visually compare BMI against long-term trends in CPAP statistics. This is much more than is disclosed in Yurko. In fact, Yurko does not even talk about historical storage of older data that would be required to compare BMI against long-term trends in CPAP statistics.

The other references cited by the Examiner have been examined but are not believed to be relevant to applicants' invention as claimed. For the above reasons, the allowance of claims 1,2 and 5-20, and the early passage to issue of the application are respectfully requested.

Respectfully submitted,

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